

From: Lee Kennedy
To: Microsoft ATR
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Subject: Microsoft Settlement

I am very concerned over the Proposed Final Judgement (PFJ) in the Microsoft case. The judgement as it stands neither prevents previous anti-competitive behavior that Microsoft has engaged in, nor adequately prevents them from using large loopholes to justify behavior that is supposedly prevented.

The specific problems are too numerous to fully detail here, but I will outline several as an example:

- 1) The PSJ includes terms to increase Microsoft's disclosure of technical information to Independent Software Vendors. However there are a number of obvious shortcomings in the terms:
 - a) Microsoft is not required to give any advance notice of technical requirements. Middleware vendors are required to meet reasonable technical requirements by a set deadline, but nothing prevents Microsoft from making last minute changes to the technical requirements and claiming that vendors have not met the requirements.
 - b) Microsoft is required to release documentation for APIs, but not before competing middleware vendors are required to meet the unspecified technical requirements. Vendors need access to the documented APIs in time to use them effectively before the deadline.
 - c) The definitions of MS Middleware Product and API are so narrow that many crucial elements of the Windows interface could be excluded from release, effectively negating the use of the APIs that are released.
 - d) The restrictions on how the published APIs can be used specifically prevents many of the uses that fight against the MS monopoly. The APIs can only be used to write Windows-only software, not software for Windows-compatible or non-Windows operating system. This actually allows MS to _increase_ the leverage of their OS monopoly on vendors creating applications.
 - e) There are no requirements for MS to release information about the file formats being used. The proprietary formats, which are changed frequently for little end-user benefit (i.e. Microsoft Word), are a significant barrier to entry for applications. This has not been addressed at all.

- 2) The PFJ also does not protect against a number of anti-competitive tactics MS has used in the past which directly hurt end users.

Specifically:

- a) MS uses license terms on software that explicitly prohibit the use of the software on non-Windows operating systems. This license specifically prohibits the use of competing windows-compatible operating systems.

This clearly creates a barrier to entry for competing operating systems that is based on the MS Windows OS monopoly.

b) MS has in the past used incompatibilities that are built-in to products specifically to disrupt the use of competing products (the DR-DOS case). This type of behavior allows MS to create further artificial barriers for competing windows-compatible operating systems and further extend its monopoly.

This behavior is not addressed at all in the PFJ.

These are only a few of the long list of flaws that I see in the PFJ, but should be sufficient to demonstrate that the PFJ as it stands is simply NOT ACCEPTABLE to either redress the wrongs that have been done in the past or to prevent their reoccurrence in the future. Though I am not a US citizen the world-wide effect of the MS monopoly makes this case of international importance, and I hope that my condemnation of this PFJ will be given due consideration.

Thank you,

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